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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/097,383	06/16/1998	KARE CHRISTIANSEN	PM254781	2876

909 7590 06/02/2003
PILLSBURY WINTHROP, LLP
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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/097,383

Applicant(s)

Christensen

Examiner

d. shay

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on February 19, 2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-3, 8, 10-15, 18, 23-25 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) ~~1-3, 8, 10-15, 18, 23-25~~ 1-3, 8, 10-15, 18, & 23-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 15, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harte et al in combination with Allen et al. Harte et al teach an arc lamp as claimed (see figure 1; column 1, line 64 – column 2, line 46; column 3, line 6-22; and column 4, line 5-22). Allemann et al teach a xenon flash lamp with a water filter. It would have been obvious to the artisan of ordinary skill to employ the water filter of Allemann et al in the device of Harte et al, since this is an appropriate filter for depilation as it will pass the green and ultraviolet light desired by Harte et al, and to configure the power supply so as to cause the lamp to emit e.g. square pulses, since this is known in the art and provides no unexpected result, thus producing a device such as claimed.

Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harte et al in combination with Allemann et al as applied to claims 1, 3-15, 22 and 23 above, and further in view of Gustafsson. Gustafsson teaches using circulating water to cool flash tubes and an optical fiber applicator with a convex tip. It would have been obvious to the artisan of ordinary skill to employ the lamp of Gustafsson in the device of Harte et al, since Harte et al give no particular lamp design and since the lamp of Gustafsson has a wide range of operating characteristics associated with it (see column 2, line 3-30), thus producing a device such as claimed.

Claims 10-15, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harte et al in combination with Allemann et al and Gustafsson as applied to claims 1-3 above, and further in view of Anderson et al and Optoelectronics. Optoelectronics teaches the use of

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power supplies that use simmer circuits and applies square pulses to the flash tube. Anderson et al teach the use of square wave pulses and a convex applicator tip. It would have been obvious to the artisan of ordinary skill to employ an applicator tip as taught by Anderson et al since this allows treatment of a larger area, as taught by Anderson et al; to employ the square wave light pulses therein, since this allows a more uniform optical field to apply a simmer circuit and a power supply to produce square pulses, since these will aid in the production of flat topped optical pulses, which is desirable as taught by Anderson et al; and to provide a concave or parallelepiped shape at the light guide distal end, since these are equivalent to the convex tip and provide no unexpected result, thus producing a device such as claimed.

Applicant argues that the examiner has used hindsight reconstruction to produce the claimed device from the teachings of Allemann et al and Harte, asserting no motivation for combination has been provided. The examiner respectfully invites applicants attention to the final sentence of the rejection of claim 1, wherein the motivation for the applied combination is clearly elucidated. As applicant has pointed to no flaw in reasoning of the motivation, this unsupported and clearly erroneous assertion is not convincing.

Applicant also argues that the examiner is picking and choosing various elements citing *Grain Processing* to demonstrate the impropriety of using the instant disclosure as a blueprint to the combination of references and also citing *Kamm* to demonstrate the aforementioned impropriety as well as the impropriety of picking and choosing only so much as will support a given position to the exclusion of other parts to the full appreciation of what the references family suggests to one having ordinary skill.

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The examiner respectfully submits that the applied combination is entirely within the guidelines set forth in both *Grain Processing* and *Kamm*. Harte discusses the use of a filter, but does not discuss the particular form thereof. Allemann et al discuss the use of a filter – the water filter – which will pass the desired wavelengths of Harte et al thus the use of the water filter is proper and within the guidelines of *Grain Processing* and there is further no teaching or suggestion in either of the references that such a filter should not be used and thus rejection is thus proper in view of the holdings in *Kamm*.

Applicant then argues that the filter of Allemann et al cannot be bodily incorporated into the device of Harte et al. The examiner notes that this is not a required criterion the propriety of the combination (see *In re Bozek* 163 USPQ 545).

It is also asserted that the claimed energy level is not taught by the combination. The examiner must respectfully disagree. The claimed energy level is found in the teachings throughout Harte et al (see e.g. table 1 in column 2 thereof).

Regarding the configuration of the output light pulses of e.g. claim 10, applicant argues no power supply for producing optical pulses as claimed has been shown. The examiner has amended the rejection to include the reference “Optoelectronics” which was made of record in the response filed June 3, 2002 (see the last paragraph page 4 thereof). This publication was filed without a publication date, however, as the information in the publication is used to refute the examiner’s analysis of one of the prior art references by showing how one having ordinary skill in the art at the time of the invention would read the Allemann et al reference, this is considered prima facie evidence that the publication is prior art. Should it subsequently be determined that the publication is not prior art, the examiner invites applicant’s attention to page

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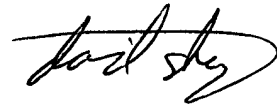
20 thereof, which lists resource articles (the latest of which was published in 1980) which shows the design of flashlamp driving circuits and simmer circuits. The Optoelectronics reference has been cited on an 892, however, since the reference was provided by applicant, the examiner believes that supplying a copy to applicant would be redundant.

The remainder of applicants arguments, predicated on deficiencies of the base combination are not convincing, since, as set forth above the base combination is proper and reads on the claims at bar.

Applicant's arguments filed February 19, 2003 have been fully considered but they are not persuasive. The arguments are not convincing for the reasons set forth above.

Applicant's arguments with respect to claims 8, 10-15, 18, and 22-25 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330

Shay/DI

May 20, 2003